

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SAN LUIS & DELTA-MENDOTA WATER ) 1:02-cv-6461 OWW DLB  
AUTHORITY, WESTLANDS WATER )  
DISTRICT, CALIFORNIA FARM BUREAU ) SCHEDULING CONFERENCE ORDER  
FEDERATION AND TED SHEELY, )

Plaintiffs, )

v. )

U.S. DEPARTMENT OF THE INTERIOR; )  
DIRK KEMPTHORNE, AS SECRETARY OF )  
THE U.S. DEPARTMENT OF THE )  
INTERIOR; U.S. FISH AND WILDLIFE )  
SERVICE; H. DALE HALL, AS )  
DIRECTOR, FISH AND WILDLIFE )  
SERVICE, U.S. DEPARTMENT OF THE )  
INTERIOR; STEVE THOMPSON, AS )  
OPERATIONS MANAGER, )  
CALIFORNIA/NEVADA OPERATIONS )  
OFFICE, FISH AND WILDLIFE )  
SERVICE, PACIFIC REGION, U.S. )  
DEPARTMENT OF THE INTERIOR; DAVE )  
ALLEN, AS REGIONAL DIRECTOR, )  
FISH AND WILDLIFE SERVICE, )  
PACIFIC REGION, U.S. DEPARTMENT )  
OF THE INTERIOR, )

Defendants. )

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NATURAL RESOURCES DEFENSE )  
COUNCIL, SACRAMENTO RIVER )  
PRESERVATION TRUST, SAVE SAN )  
FRANCISCO BAY ASSOCIATION AND )  
THE BAY INSTITUTE, )

Defendant-Intervenors. )

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1 I. Date of Scheduling Conference.

2 August 31, 2006.

3 II. Appearances Of Counsel.

4 Daniel O'Hanlon, Esq., appeared telephonically on behalf of  
5 San Luis et al., plaintiffs.

6 Gibson, Dunn & Crutcher LLP by Christopher H. Buckley, Jr.,  
7 Esq., appeared on behalf of Plaintiffs California Farm Bureau.

8 Brenda Washington Davis, Esq., appeared on behalf of  
9 Plaintiffs California Farm Bureau Federation and Ted Sheely.

10 Ronda Azevedo Lucas, Esq., appeared on behalf of Plaintiffs  
11 Ted Sheely and California Farm Bureau Federation.

12 James A. Maysonett, Esq., Trial Attorney, U.S. Department of  
13 Justice, appeared telephonically on behalf of Defendant U.S.  
14 Department of the Interior, et al.

15 James Monroe, Esq., from the Solicitor's Office, U.S.  
16 Department of the Interior also appeared telephonically for the  
17 Department of the Interior.

18 Trent W. Orr, Esq., and Andrea A. Treece, Esq., appeared on  
19 behalf of Defendant-Intervenor Natural Resources Defense Council.

20 III. Remand for Explanation Regarding

21 Matters in the McDonald E-Mail

22 1. After discussion, the parties have differing views  
23 concerning the extent and the substance of the remand for  
24 explanation concerning matters in the McDonald e-mail of March  
25 30, 2004.

26 2. The Administrative Record is remanded back to the  
27 Department of the Interior and the Fish and Wildlife Service for  
28 the purposes of explaining the contents of the McDonald e-mail.

1 The remand shall address issues concerning the accuracy,  
2 completeness, consistency, independence, potential bias, and  
3 efficacy of the status review and the underlying data and  
4 analysis upon which it was based. This remand shall include  
5 communication with Under Secretary McDonald and shall address  
6 issues including, but not limited to: (1) accuracy and  
7 completeness of information for the Status Review; (2)  
8 independence of the peer review process; (3) whether or not  
9 flawed assumptions or data were used; (4) the reliability and  
10 completeness of Delta Smelt population estimates; and (5) how the  
11 various factors within the Delta affect the Delta Smelt  
12 population; whether there were "agreements" described by McDonald  
13 and, if so the substance and purpose of the agreements.

14       3. By October 30, 2006, Federal Defendants shall  
15 supplement the Administrative Record in this matter (and file and  
16 serve said supplement on all parties) with (1) the McDonald e-  
17 mail; (2) a full, written explanation of the matters raised in  
18 the McDonald e-mail and discussed in the immediately preceding  
19 section of this order; and (3) any other contemporaneous  
20 documents necessary to clarify or otherwise explain the matters  
21 raised in the McDonald e-mail.

22 IV. Schedule For Future Briefings

23       1. Plaintiff Farm Bureau shall file any motion challenging  
24 the adequacy of the Federal Defendants' completion of this remand  
25 and supplementation of the Administrative Record by November 14,  
26 2006. If Plaintiff Farm Bureau files such a motion, Federal  
27 Defendants and Defendant-Intervenors shall file any opposition by  
28 November 28, 2006. Plaintiff Farm Bureau shall file its reply by

1 December 12, 2006. The hearing on any such motion shall be on  
2 January 5, 2007, at 10:00 a.m. in Courtroom 3.

3 V. Summary Judgment.

4 1. Plaintiff shall file motions for summary judgment on  
5 all claims by December 22, 2006.

6 2. Federal Defendants and Defendant-Intervenors shall file  
7 oppositions thereto and cross-motions for summary judgment by  
8 January 26, 2007.

9 3. Plaintiffs shall file their replies and opposition to  
10 Defendants' cross-motions for summary judgment by February 9,  
11 2007.

12 4. Federal Defendants and Defendant-Intervenors shall file  
13 their replies to Plaintiffs' opposition by February 23, 2007.

14 5. The cross-motions for summary judgment shall be heard  
15 on March 23, 2007, at 10:00 a.m., in Courtroom 3. Extended time  
16 is reserved for oral argument.

17 6. The parties understand that depending upon results of  
18 the remand that this schedule may have to be modified.

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20 IT IS SO ORDERED.

21 Dated: September 1, 2006  
emm0d6

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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